

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 NEA-10 ISO-00 CIAE-00 DODE-00 PM-07

H-03 INR-10 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15

USIA-15 IO-13 AF-10 /127 R

DRAFTED BY L/NEA:ATBROWN:BDF

9/6/73 EXT 20951

APPROVED BY NEA/ARP:FMDICKMAN

INR/RAA - MR. THORNE (INFO)

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R 062316Z SEP 73

FM SECSTATE WASHDC

TO AMEMBASSY KUWAIT

AMEMBASSY JIDDA

INFO AMEMBASSY ABU DHABI

AMEMBASSY AMMAN

AMEMBASSY LONDON

AMEMBASSY TEHRAN

C O N F I D E N T I A L STATE 177681

E.O. 11652; GDS

TAGS: PFOR, SA, KU, TC

SUBJ: SAUDI/KUWAIT AND SAUDI/UAE RELATIONS

BEIRUT PASS BAGHDAD

REF: KUWAIT 3059

1. SUMMARY. REFERRING TO SAUDI/ABU DHABI BORDER DISPUTE, REFTEL REQUESTED DEPT TO SUGGEST FORMULA FOR RECOGNITION THAT WOULD NOT PREJUDICE RESPECTIVE POSITIONS OF THE TWO STATES AND TO FIND PRECEDENT OF RECOGNITION WITH CONDITIONS ATTACHED. WHILE DEPT NOT CLEAR WHETHER EMB KUWAIT HAS IN MIND RECOGNITION OF GOVERNMENT OR STATE OF UAE, WE DO NOT BELIEVE EXISTENCE OF BORDER DISPUTE SHOULD, IN LEGAL OR PRACTICAL TERMS, BAR RECOGNITION BY SAUDIS OF UAE OR UAEG.
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CONDITIONS CONCERNING BOUNDARIES WERE INCLUDED IN

RECOGNITIONS OF NEW EUROPEAN STATES AFTER WORLD WAR I, AND BORDER DISPUTES BETWEEN ETHIOPIA AND SOMALIA AND BETWEEN MOROCCO AND ALGERIA DID NOT PROHIBIT ESTABLISHMENT OF DIPLOMATIC RELATIONS IN THOSE CASES. END SUMMARY.

2. MOST INTERNATIONAL LAW COMMENTATORS ACKNOWLEDGE THAT BOUNDARY DISPUTES HAVE NOT PROHIBITED RECOGNITION OF STATES OR GOVERNMENTS. AS A GENERAL RULE, RECOGNITION IS A MATTER OF INTENTION IN RESPECT TO BOTH SCOPE AND EFFECT. FOR THIS PRINCIPLE, GEORG SCHWARZENBERGER, "A MANUAL OF INTERNATIONAL LAW", FIFTH EDITION, PUBLISHED UNDER AUSPICES OF THE LONDON INSTITUTE OF WORLD AFFAIRS, PAGE 69, MAY BE CITED AS WELL AS H. LAUTERPACHT, "RECOGNITION IN INTERNATIONAL LAW," SECTION 108. THUS, ANY STATEMENT OF RECOGNITION BY SAUDI ARABIA WHICH EXPRESSLY RESERVED ITS POSITION IN RESPECT TO THE BOUNDARY DISPUTE WOULD PROTECT THE SAUDIS, FOR IT COULD NOT BE INTERPRETED AS INTENDING A CONCESSION ON THE BOUNDARY ISSUE.

3. EMBASSY JIDDA MIGHT CONSIDER SUGGESTING TO SAUDIS A RECOGNITION STATEMENT ALONG FOLLOWING LINES: QUOTE: THE GOVERNMENTS OF SAUDI ARABIA AND THE UNITED ARAB EMIRATES ARE ENTERING INTO DISCUSSIONS LOOKING TOWARD THE ESTABLISHMENT OF DIPLOMATIC RELATIONS. ACCORDINGLY, THE GOVERNMENT OF SAUDI ARABIA HAS RECOGNIZED UNITED ARAB EMIRATES AND ITS GOVERNMENT AND LOOKS FORWARD TO ENJOYMENT OF WARM RELATIONS. A NUMBER OF ISSUES, INCLUDING THOSE CONCERNING PARTS OF THEIR COMMON BOUNDARY, REMAIN TO BE DETERMINED, AND THE ESTABLISHMENT OF DIPLOMATIC RELATIONS WILL CONSTITUTE A FURTHER STEP IN THE GROWING DIALOGUE BETWEEN THE TWO GOVERNMENTS. END QUOTE. OF COURSE, ANY LANGUAGE WOULD SUFFICE SO LONG AS IT MAKES CLEAR SAG'S INTENTION TO RESERVE ITS POSITION ON THE BOUNDARY QUESTION.

4. WHEN THE NEW STATES WHICH AROSE AFTER WORLD WAR I WERE RECOGNIZED, SUCH RECOGNITION WAS GENERALLY ACCOMPANIED BY A STIPULATION THAT THE NEW STATE ACCEPT FRONTIERS TO BE ESTABLISHED BY THE PEACE CONFERENCE. FOR INSTANCE: "IN RECOGNIZING THE INDEPENDENCE OF FINLAND HIS MAJESTY'S GOVERNMENT DO SO WITH CONFIDENCE (AND) UNDERSTANDING THAT

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THE FINNISH GOVERNMENT ACCEPTS THE DECISION TO BE TAKEN BY THE PEACE CONFERENCE AS TO THE DRAWING OF HER FRONTIERS" (LAUTERPACHT, SUPRA, P. 30).

5. THERE HAVE BEEN A NUMBER OF INSTANCES IN WHICH COUNTRIES HAVE ESTABLISHED DIPLOMATIC RELATIONS WHILE FULLY CONSCIOUS THAT A BORDER DISPUTE EXISTED BETWEEN THEN. BEFORE INDEPENDENCE OF SOMALIA IN 1960, ETHIOPIA AND ITALY

HAD NEGOTIATED OVER THE COMMON BOUNDARY UNDER AUSPICES OF THE UNITED NATIONS. JUST BEFORE SOMALIA'S INDEPENDENCE, ETHIOPIA AND ITALY AGREED THAT THE "PROVISIONAL ADMINISTRATIVE LINE" THEN EXISTING BETWEEN ETHIOPIA AND THE TRUST TERRITORY WHICH WAS TO BECOME SOMALIA WOULD REMAIN IN EFFECT AFTER SOMALIA'S INDEPENDENCE AND UNTIL A FINAL BOUNDARY WAS AGREED UPON. AFTER INDEPENDENCE, SOMALIA AND ETHIOPIA ESTABLISHED DIPLOMATIC RELATIONS ALTHOUGH BOTH COUNTRIES WERE FULLY AWARE THAT BOUNDARY REMAINED UNSETTLED, AND THEY HAVE MAINTAINED DIPLOMATIC RELATIONS EVER SINCE. THE BOUNDARY IS STILL DISPUTED.

6. IN 1963 THERE WAS A BRIEF WAR BETWEEN MOROCCO AND ALGERIA OVER A DISPUTED BOUNDARY BETWEEN THEM. WITHOUT SETTLEMENT OF BOUNDARY QUESTION, DIPLOMATIC RELATIONS WERE REESTABLISHED IN 1964. FOLLOWING TLEMCEN AGREEMENTS OF 1970, HEADS OF TWO STATES HAVE NOW AGREED UPON A SETTLEMENT OF THE BOUNDARY DISPUTE; ALGERIA HAS RATIFIED THE AGREEMENT BUT MOROCCO STILL HAS NOT.

7. WE HAVE NOT BEEN ABLE TO FIND WHAT STATEMENTS IF ANY WERE MADE BY RESPECTIVE GOVERNMENTS AT TIME OF ESTABLISHING DIPLOMATIC RELATIONS IN CASES DESCRIBED IN PARAS 5 AND 6 ABOVE. PRINCIPAL POINT, HOWEVER, IS THAT THOSE GOVERNMENTS DID NOT FIND ESTABLISHMENT OR RESUMPTION OF DIPLOMATIC RELATIONS INCONSISTENT WITH EXISTENCE OF CONTINUING BOUNDARY DISPUTE, AND THERE HAS BEEN NO INDICATION IN EITHER CASE THAT RESPECTIVE POSITIONS IN THE DISPUTES WERE AFFECTED BY ESTABLISHMENT OF RELATIONS.

8. FOREGOING IS INTENDED TO PROVIDE A BRIEF, VERY GENERAL DESCRIPTION OF INTERNATIONAL LEGAL PRINCIPLES INVOLVED WHEN CONFIDENTIAL

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BOUNDARY DISPUTES ARE RAISED IN CONNECTION WITH RECOGNITION QUESTIONS AND TO PROVIDE PRECEDENTS WHICH THE SAUDIS MAY FIND REASSURING. IF EITHER EMBASSY JIDDA OR KUWAIT FEELS MORE DETAILED LEGAL ANALYSIS AND/OR MORE EXTENSIVE RECITATION OF PRECEDENTS WOULD BE SUFFICIENTLY USEFUL TO JUSTIFY THE EFFORT, DEPT WILL UNDERTAKE FURTHER STUDY. WE FEEL, HOWEVER, THAT THE BASIC PRINCIPLE SHOULD BE CLEAR: VIZ, A CLEARLY STATED RESERVATION OF SAG'S POSITION CONCERNING THE BORDER DISPUTE WITH UAE (ABU DHABI) WOULD, BOTH LEGALLY AND PRACTICALLY, PROTECT SAG'S INTERESTS WHILE PERMITTING RECOGNITION OF UAE AND/OR UAEG. RUSH

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: RECOGNITION, INTERNATIONAL LAW, BOUNDARY DETERMINATION
Control Number: n/a
Copy: SINGLE
Draft Date: 06 SEP 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: collinp0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE177681
Document Source: CORE
Document Unique ID: 00
Drafter: ATBROWN:BDF
Enclosure: n/a
Executive Order: GS DICKMAN
Errors: N/A
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730950/aaaabkuy.tel
Line Count: 165
Locator: TEXT ON-LINE
Office: ORIGIN L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: KUWAIT 3059
Review Action: RELEASED, APPROVED
Review Authority: collinp0
Review Comment: n/a
Review Content Flags:
Review Date: 26 DEC 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <26-Dec-2001 by martinml>; APPROVED <27 FEB 2002 by collinp0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SAUDI/KUWAIT AND SAUDI/UAE RELATIONS BEIRUT PASS BAGHDAD
TAGS: PFOR, PBOR, SA, KU, TC
To: KUWAIT JIDDA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005